

NORTH CAROLINA GENERAL ASSEMBLY  
1979 SESSION

CHAPTER 285  
SENATE BILL 372

AN ACT TO AMEND CHAPTER 117, ELECTRIFICATION, OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

**Section 1.** Chapter 117 of the General Statutes is amended by adding a new section to read as follows:

"§ 117-2.1. **Additional powers.** — In addition to the powers provided in G.S. 117-2, the Authority is empowered, authorized and directed to make, promulgate and implement plans and programs whereby the electric membership corporations organized or domesticated under this Chapter shall promote and foster methods of conserving electric energy in accordance with provisions of the National Energy Act as delegated to the States."

**Sec. 2.** G.S. 117-13 is amended by deleting the last two sentences of the section and substituting therein the following:

"The directors shall be entitled to receive for their services only such compensation as is provided in the bylaws. The board shall elect annually from its own number a president and a secretary. The directors must be members of the corporation, except that for those corporations whose principal purpose is to furnish bulk electric wholesale power supplies and whose membership consists of other electric membership corporations, the directors may be members, directors, officers or managers of the member corporations, and shall be elected by the member corporation's board of directors."

**Sec. 3.** G.S. 117-16 is amended by adding at the end of that section the following:

"With respect to the members of an electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale, the word 'use' as used in this section shall also mean either 'use and purchase' or 'purchase' solely, as the case may be, and the words 'supplied by' shall also mean 'supplied for the account of'. With respect to an electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale, it shall be lawful for such corporation to enter into joint arrangements with other power supply entities, including but not limited to investor-owned public utilities and bodies politic, for the purchase and sale of bulk power supplies and bulk power services and for the joint ownership of bulk power supply properties."

**Sec. 4.** Chapter 117 of the General Statutes, is amended by adding a new Article to read as follows:

"ARTICLE 5.

"Consolidation and Merger.

"§ 117-36. **Consolidation.** — (a) Any two or more electric membership corporations or any two or more telephone membership corporations, organized and operating under this Chapter (each of which is hereinafter designated a 'consolidating corporation'), may consolidate into a new corporation (hereinafter designated the 'new corporation'), by complying with the provisions of subsections (b) and (c) hereof and of G.S. 117-38.

(b) The proposition for the consolidation of the consolidating corporations into the new corporation and proposed articles of consolidation to give effect thereto shall be submitted to a

meeting of the members of each consolidating corporation, the notice of which shall have attached thereto a copy of the proposed articles of consolidation.

(c) If the proposed consolidation and the proposed articles of consolidation, with any amendments, are approved by the affirmative vote of not less than two-thirds of those members of each consolidating corporation voting thereon at each such meeting, articles of consolidation in the form approved shall be executed and acknowledged on behalf of each consolidating corporation by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of consolidation shall recite that they are executed pursuant to this Chapter and shall state: (1) the name of each consolidating corporation and the address of its principal office; (2) the name of the new corporation and the address of its principal office; (3) a statement that each consolidating corporation agrees to the consolidation; (4) the names and addresses of the directors of the new corporation; and (5) the terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner in which members of the consolidating corporations may or shall become members of the new corporation; and may contain any provisions not inconsistent with this Chapter deemed necessary or advisable for the conduct of the business of the new corporation. The president or vice-president of each consolidating corporation executing such articles of consolidation shall make and annex thereto an affidavit stating that the provisions of this section in respect of such articles were duly complied with by such corporation.

**"§ 117-37. Merger.** — (a) Any one or more electric membership corporations or any one or more telephone membership corporations, organized and operating under this Chapter (each of which is hereinafter designated a 'merging corporation'), may merge into another like corporation (hereinafter designated the 'surviving corporation'), by complying with the provision of G.S. 117-37(b) and (c), and G.S. 117-38.

(b) The proposition for the merger of the merging corporation(s) into the surviving corporation and proposed articles of merger to give effect thereto shall be submitted to a meeting of the members of such merging corporation(s) and of the surviving corporation, the notice of which shall have attached thereto a copy of the proposed articles of merger.

(c) If the proposed merger and the proposed articles of merger, with any amendments, are approved by the affirmative vote of not less than two-thirds of those members of each corporation voting thereon at each such meeting, articles of merger in the form approved shall be executed and acknowledged on behalf of each such corporation by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of merger shall recite that they are executed pursuant to this Chapter and shall state: (1) the name of each merging corporation and the address of its principal office; (2) the name of the surviving corporation and the address of its principal office; (3) a statement that each merging corporation and the surviving corporation agree to the merger; (4) the names and addresses of the directors of the surviving corporation; and (5) the terms and conditions of the merger and the mode of carrying the same into effect, including the manner in which members of the merging corporations may or shall become members of the surviving corporation; and may contain any provisions not inconsistent with this Chapter deemed necessary or advisable for the conduct of the business of the surviving corporation. The president or vice-president of each corporation executing such articles of merger shall make and annex thereto an affidavit stating that the provisions of this section in respect of such article were duly complied with by such corporation.

**"§ 117-38. Filing and recording of articles of consolidation or merger.** — Articles of consolidation or merger shall be filed with the Secretary of State, who shall forthwith prepare one or more certified copies thereof and forward one to the register of deeds of each county in which a portion of the territory of the filing corporation is authorized to furnish service, which registers of deeds shall forthwith file such certified copy in their respective offices and record the same as articles of incorporation are recorded. As soon as the provisions of this section

have been complied with, the new consolidated corporation or the surviving merged corporation, described and named in the articles so filed, shall become and constitute a body corporate in accordance with the provisions of such articles.

**"§ 117-39. Effect of consolidation or merger.** — Upon compliance with the provisions of G.S. 117-39:

(a) (1) In the case of a consolidation, the existence of the consolidating corporations shall cease and the articles of consolidation shall be deemed to be the articles of incorporation of the new corporation; and (2) in the case of a merger, the separate existence of the merging corporations shall cease and the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes therein are provided for in the articles of merger.

(b) All the rights, privileges, immunities and franchises and all property, real and personal, including without limitation applications for membership, all debts due on whatever account and all other choses in action, of each of the consolidating or merging corporations shall be deemed to be transferred to and vested in the new or surviving corporation without further act or deed.

(c) The new or surviving corporation shall be responsible and liable for all the liabilities and obligations of each of the consolidating or merging corporations and any claim existing or action or proceeding pending by or against any of the consolidating or merging corporations may be prosecuted as if the consolidation or merger had not taken place, but the new or surviving corporation may be substituted in its place.

(d) Neither the rights of creditors nor any liens upon the property of any of such corporations shall be impaired by such consolidation or merger.

**"§ 117-40. Validation.** — No provision of Article 5 nor any provision thereof shall, or shall be construed to, express or imply the invalidity or invalidation of the incorporation or operations of any electric or telephone membership corporation heretofore organized and operating under Chapter 117 of the General Statutes, including but not limited to North Carolina Electric Membership Corporation and any two or more electric or telephone membership corporations which have substantively merged or consolidated; and any such substantive mergers or consolidations are hereby specifically validated."

**Sec. 5.** Any laws or provisions of laws which are in conflict with any provision of this act are repealed.

**Sec. 6.** This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 3rd day of April, 1979.